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Lighthizer Gives Back-to-Back Testimony on Trade Priorities

Over the course of two days of hearings June 21-22, U.S. Trade Representative (USTR) Robert Lighthizer testified before the Senate Finance and House Ways and Means committees on the administration's trade goals, touching on all the hot points, including ongoing disputes at the World Trade Organization (WTO), trade deals with the European Union (EU) and Asia, and of course the NAFTA renegotiation (see story below).

Lighthizer, a long-time WTO critic, made clear that "a bad decision with respect to the non-market economy status of China ... would be cataclysmic for the WTO." China brought a dispute in December against the EU and the U.S., demanding it be recognized as a market economy (see **WTTL**, May 15, page 6). In written testimony, Lighthizer wrote that he is in discussions with WTO Director-General Roberto Azevedo about reforming WTO's dispute settlement structure, since he believes that the U.S. is unfairly targeted by other countries.

All trade deals are under review, and the Korea-U.S. deal (KORUS) is one that USTR is looking at closely, Lighthizer told Ways and Means; however, "there are no plans to drop out of KORUS at this point," he said. He noted that he had an upcoming meeting with the Koreans to discuss "thorny issues" that are harming U.S. exports.

"If you have a big trade surplus with the United States, you'd better get rid of the barriers to our exports to you," Lighthizer said, a theme he hit on several times. On a potential Japan-U.S. bilateral agreement, neither country is prepared to start those talks, he added. There might be some good news on the Transatlantic Trade and Investment Partnership (TTIP). Lighthizer indicated that the stalled agreement could be taken up again after German elections in September. "We certainly agree that's an important negotiation."

USTR Makes No Commitments on NAFTA Talks

During those two days, the hearings, not surprisingly, focused on NAFTA renegotiations, which can begin as soon as Aug. 16. NAFTA objectives will be published July 17 after

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three days of public hearings June 27-29. Noting that the administration has set an ambitious timeline to finish renegotiations, Sen. Ron Wyden (D-Ore.), who said he wants to see “real improvements not just small cosmetic changes,” pressed Lighthizer on what he would do if an agreement could not be reached by the end of the year.

Lighthizer assured Wyden that as USTR he is “prepared to continue to negotiate until we get a high-standard agreement, unless there’s a total stalemate, in which case I’ll be back in front of this committee and I’ll consult with senators.”

He was less committal the next day before Ways and Means when addressing controversial investor-state dispute settlement (ISDS) provisions. “I think ISDS is something that we have to discuss and be informed more by the members, so I won’t make a final position right now,” Lighthizer said in response to Rep. Lloyd Doggett (D-Texas).

“I would say this, it clearly is a balance. There is a legitimate interest in people who go overseas and invest in the United States has an obligation to do what it can to make sure those people are treated fairly. On the other hand, as you suggest congressman, I am troubled by the sovereignty issue. I’m troubled by the fact that anyone – anyone can overrule the United States Congress and the president of the United States when [they have] passed a law,” he said.

On the subject of Mexico’s labor standards, a topic that Democrats repeatedly raised, Rep. Sander Levin (D-Mich.) said he hoped the administration would “insist that Mexico bring its labor laws and practices into compliance with basic labor standards before Congress is asked to vote on a renegotiated NAFTA agreement.”

“Do I believe that Mexican labor laws are having a negative effect on the U.S.? Yes, I believe that,” said Lighthizer. “We do believe you have to have basic ILO [International Labor Organization] core standards and we believe that they have to be enforceable -- just like we believe that every provision in the agreement has to be enforceable. Do I believe there should be a commitment to improve before the vote? No, no, I don’t.”

Canada did not escape criticism. Lighthizer pledged to address dairy issues within the context of NAFTA (see **WTTL**, April 24, page 7). He also pledged to address intellectual property rights issues, particularly in relation to pharmaceuticals. Lighthizer also mulled whether an ongoing wine dispute, in which U.S. wines are kept off of shelves in British Columbia, could be addressed in NAFTA talks “in a less kind of hostile way” (see **WTTL**, April 3, page 7).

OFAC Adds More Russian Sanctions, Moscow Cancels Meeting

Amid swirling press reports about the investigation into Russia’s influence on the 2016 election, the administration is quietly maintaining and adding sanctions on Moscow. Treasury’s Office of Foreign Assets Control (OFAC) June 20 added sanctions on 38 individuals and entities under four previous Ukraine-related Executive Orders (EOs).

In response, Russian officials canceled a planned meeting with administration officials. Those designated include 21 Ukraine separatists, 11 individuals and entities that operate in Crimea, including six banks, and six individuals and entities that are officials of the Russian government or engaged in the evasion of existing sanctions.

Among the new sanctions are insurance carrier KPSK, OOO; Crimea hotel complex Riviera Sunrise Resort & Spa; IFD Kapital (IFDK), a diversified holding company, which owns Riviera; and Oboronlogistika, OOO the Russian Defense Ministry's "sole executor for the procurement of goods, works, and services for maritime transport of military troops and freight on the territory of the so-called Republic of Crimea," OFAC noted.

Another Russian firm, Molot-Oruzhie, OOO manufactures ordnance and accessories. In 2016, previously designated Kalashnikov Concern "advised a foreign company to use Molot-Oruzhie, OOO to falsify invoices in order to circumvent U.S. and EU sanctions," OFAC noted in the press release announcing the sanctions.

OFAC also identified 20 subsidiaries that are owned 50% or more by the previously designated AK Transneft OAO, under Executive Order (EO) 13662, which prohibits U.S. persons from dealing in new debt of greater than 90 days maturity of the sanctioned entities. OFAC added Transneft to its sectoral sanctions list in September 2014 (see *WTTL*, Sept. 15, 2014, page 9).

The day after the sanctions announcement, Russian government officials canceled a planned meeting with Under Secretary of State Shannon. "We regret that Russia has decided to turn away from an opportunity to discuss bilateral obstacles that hinder U.S.-Russia relations," State spokesperson Heather Nauert said in a statement.

"If the Russians seek an end to these sanctions, they know very well the U.S. position: Our sanctions on Russia related [to] Russia's ongoing aggression against Ukraine will remain in place until Russia fully honors its obligations under the Minsk Agreements. Our sanctions related to Crimea will not be lifted until Russia ends its occupation of the peninsula," Nauert noted.

In parallel with the OFAC sanctions, Bureau of Industry and Security (BIS) in the Federal Register June 22 added 10 of the sanctioned entities to its Entity List: Bike Center; Private Military Company Wagner; Wolf Holding of Security Services; Concord Catering; Limited Liability Company Concord Management Consulting; Molot-Oruzhie; IFDK; KPSK; Oboronlogistika; and Riviera Sunrise Resort & Spa.

Separately, a bipartisan group of six senators, led by Finance Committee Ranking Member Ron Wyden (D-Ore.) and Foreign Relations Committee Ranking Member Ben Cardin (D-Md.), wrote to Treasury Secretary Steve Mnuchin and Secretary of State Rex Tillerson regarding blocked Russian oil producer Rosneft's potential control of U.S. oil company Citgo.

Treasury "must immediately determine the likelihood of Rosneft acquiring a controlling stake in Citgo," the senators said. "Reports suggest that a license could be required for

Citgo to continue orderly operations should Rosneft take control. If that is the case, it would appear that, barring the license, the transaction would necessarily result in one or more sanctions violations,” they wrote.

Aluminum Producers Air Concerns on Section 232 Investigation

No beer was served during Commerce’s hearing June 22 on the national security implications of aluminum imports, but the canned beverage industry was out in force. More than 30 industry executives, union leaders and foreign officials testified on whether the department should put in place measures to protect the domestic industry from unfair trade practices particularly from China.

For the second time in his term, Trump in April ordered Commerce to investigate the national security implications of particular imports under the little-used Section 232 of the Trade Expansion Act of 1962 (see **WTTL**, May 1, page 3).

At the hearing, most of the witnesses expressed support for the domestic but urged the department to exclude its specific trading partner, such as Canada and the European Union (EU), or a specific type of import, such as aluminum foil for food packaging industries or aluminum can sheet for the beverage industry. Unions in contrast argued for broad protections for U.S. industry that is losing jobs and closing smelter plants.

Many witnesses pinned the problem on Chinese overcapacity and government subsidies. In March, the Aluminum Association, European Aluminum and Aluminum Association of Canada requested the G20 create Global Forum on aluminum excess capacity, similar to the forum on steel (see **WTTL**, March 20, page 6). The three groups repeated those sentiments in a joint statement the day before the Commerce hearing.

“We acknowledge the issue of Chinese aluminium [sic] excess capacity as the root cause of the challenges faced by the aluminium industries in North America and in Europe. Overcapacity encourages unfair trading practices and displacement of domestic production, which cause global imbalances in the aluminium industry and distort international trade flows,” they wrote.

However, those same groups argued against broad trade remedies that could hurt their international supply chain. “We urge our governments not to hamper the positive effects that trade and cooperation can bring among companies in our regions. We fully advocate for a fair, equitable and rules based global trading system,” they wrote.

For its part, Chinese officials defended its practices at the hearing, calling for “dialogue and constructive engagement.” Li Xie, director, export division, China’s Ministry of Commerce, testified that “global overcapacity is the result of many factors, including weaknesses in global economic growth and sluggish demand.” China has “proactively undertaken many measures to eliminate excess domestic aluminum production capacity and to encourage broader application of aluminum products,” he added.

Robert E. Scott, senior economist with the Economic Policy Institute, sounded the alarm on “unstable” aluminum sources and called the threat to U.S. national security “significant.” The domestic industry “is losing its ability to develop and supply products for U.S. defense and critical infrastructure applications. Instead, the downstream U.S. producers are becoming increasingly dependent on unreliable sources of imports from the Middle East, Russia and elsewhere,” Scott told the hearing.

Scott urged the department to find broad remedies, but also pushed for excluding Canada. “As a contiguous source of stable supply, Canada should be excluded from relief while establishing broad, across the board restrictions on imports of both primary and downstream aluminum products,” Scott said.

Some witnesses had other specific remedies ready to go, such as Thomas Robb of New Day Aluminum, who recommended the creation of a U.S. bauxite stockpile. Bauxite is the raw material that gets turned into aluminum, and there is currently no U.S. source. New Day owns a bauxite mine in Jamaica.

Prior to the hearing, 13 members of the Congressional aluminum caucus wrote a letter to Commerce Secretary Wilbur Ross urging the department to address Chinese practices but to exclude Canada from any remedies. “Chinese overcapacity and trade of Chinese products through third countries is the fundamental issue that needs to be addressed,” the lawmakers wrote, adding that “Chinese oversupply affects the full value chain.” Calling U.S. aluminum trade with Canada is “strategically vital,” the lawmakers noted, “A trade remedy that impairs aluminum trade with Canada would not be in our national security or economic interest.”

Of course, this is not the only investigation into aluminum imports from China. Just days before the end of the Obama administration, former USTR Michael Froman initiated WTO consultations with China, accusing Beijing of subsidizing its aluminum industry leading to excess capacity (see **WTTL**, Jan. 16, page 2).

Separately, Commerce announced in April it would examine China’s non-market economy (NME) status under antidumping (AD) and countervailing duty (CVD) laws as part of the less-than-fair value investigation of certain aluminum foil from China (see **WTTL**, April 3, page 4). In a 5-0 “sunset” vote in March, the International Trade Commission (ITC) said antidumping and countervailing duty orders on certain aluminum extrusions from China would renew injury to U.S. industry.

Steel Industry Urges Administration to Rethink Section 232 Probe

Don’t restrict steel imports under Section 232, the American Institute for International Steel (AIIS) warned the administration June 20 at a press conference in Washington. To do so will create chaos domestically and potentially open the U.S. up to lawsuits and damaged trade relations internationally, the industry group said, repeating arguments from a recent Commerce hearing on the subject.

“Invoking Section 232 is a Pandora’s box we may soon wish we did not open,” said AIIS President Richard Chriss. “It will complicate and potentially damage our foreign trade and diplomatic relations, creating unnecessary tensions at a time when we ought to be finding new ways to cooperate in the international sphere,” he added.

AIIS objects to the accelerated timeline put forth by Commerce Secretary Wilbur Ross. Ross told the Senate Appropriations commerce subcommittee June 8 that the investigation will conclude “very shortly,” possibly by the end of this month, far shorter than the 270 days provided by law (see **WTTL**, June 12, page 4).

AIIS also wants another hearing, similar to the two-day hearing held last year regarding steel overcapacity (see **WTTL**, April 18, 2016, page 3). “Why not reopen the hearing?” Chriss said. “This would allow us to step back and take a deeper, more careful look at what we ought to do and what the consequences of implementing Section 232 restrictions will likely be.”

Robert Landry, vice president and chief commercial officer for the Port of New Orleans, told the press conference that steel tariffs imposed in 2002 under Section 201 of the Trade Act of 1974 caused his port to suffer a 46% decline in steel imports, a direct loss of \$1.6 million in revenue. Section 232 is far broader and could hurt more people, Landry claimed.

“While one would expect sanctions on imported steel to only exacerbate the rise in steel prices, the ripple effect on other commodities would be less noticeable but just as adverse. For example, 80% of the steel moving through the Port of New Orleans moves up the Mississippi river by barge. Those same barges are then used by U.S. farmers to deliver agricultural products to the grain elevators located on the Lower Mississippi River. Without those barges moving upriver, the cost to transport U.S. grain increases, making U.S. agricultural products less competitive with those in other producing countries like Brazil and Russia,” said Landry.

Trade lawyer Lewis Leibowitz argued that the domestic steel industry doesn’t have a legal leg to stand on. To prove a threat to national security under Section 232, imports must undermine domestic industry’s ability to supply goods for the defense of the U.S. “There is essentially no evidence that this is the case at present because steel production for national defense is one percent or less of domestic production; the information we have is that the Defense Department does not see a problem, and they should know as well as anyone,” said Leibowitz.

He noted that the last time steel was subject to national security investigation was following the Sept. 11, 2001 terrorist attacks. At that time Commerce found no impact on national security. Furthermore, outcomes from the investigation could open the U.S. to lawsuits at the World Trade Organization (WTO), he predicted.

“Import restrictions on fairly traded steel under section 232 threaten steel consumers, ports, distributors and workers with disaster. Our steel consumers are dependent on imports because of lack of production by domestic suppliers of many sizes and grades of

steel, and uncompetitive pricing. This problem is not new; but the solution is decidedly not to deprive steel consumers of needed supplies,” noted Leibowitz.

WTO Establishes Panel for Turkey-U.S. OCTG Dispute

The World Trade Organization’s (WTO) Dispute Settlement Body (DSB) had a busy meeting June 19 establishing panels, hearing updates on implementations and arguing over how to replace two outgoing Appellate Body (AB) members. The DSB will next meet July 20.

The DSB granted Turkey its second request for the establishment of a WTO panel (DS523) on U.S. countervailing duty measures on certain oil country tubular goods (OCTG), welded line pipe, heavy walled rectangular welded carbon steel pipes and tubes and circular welded carbon steel pipes and tubes. The U.S. blocked Turkey’s first request in May (see **WTTL**, May 29, page 6). The U.S. expressed disappointment with Turkey’s request since the determinations have already been vacated.

The U.S. said it needs a reasonable amount of time to implement the findings of a dispute (DS471) concerning certain methodologies and their application to antidumping proceedings involving China (see **WTTL**, May 29, page 6). The U.S. and China will hold discussions to agree on a compliance deadline. China welcomed the news.

The process by which to select new AB members continues to be a point of friction. Two AB members’ terms will expire this year, one in June and the other in December, yet there is no consensus on how to start the proceedings to find and vet replacements. The U.S. said it is still going through a transition process in Washington; therefore it could not agree to launch a selection process for the December term, but is open to a Latin American group proposal that would begin replacing the member whose term expires June 30.

* * * Briefs * * *

OLIVES: Coalition for Fair Trade in Ripe Olives June 22 filed antidumping and countervailing duty petitions at ITA and ITC against imports of ripe olives from Spain. Coalition consists of Bell-Carter Foods of Walnut Creek, Calif., and Musco Family Olive Company of Tracy, Calif.

ENVIRONMENTAL GOODS: Several negotiating members of WTO Environmental Goods Agreement (EGA) June 20 called for relaunch of negotiations, which stalled in December (see **WTTL**, Dec. 12, page 2). “EGA members continue to take stock on the way forward for negotiations and call on others to consider joining,” Australia’s Andrew Martin, chair of negotiations, said. U.S., also EGA negotiating member, did not speak.

BURMA: In Federal Register June 16, OFAC removed Burmese Sanctions Regulations from Code of Federal Regulations “as a result of the termination of the national emergency on which the regulations were based.” BIS removed license requirements and other restrictions on exports, reexports or transfers (in country) to previously blocked entities in Burma in December (see **WTTL**, Jan. 2, page 11). Obama administration formally lifted remaining U.S. sanctions on country in October.

EXPORT ENFORCEMENT: Marlou Mendoza of Long Beach, Calif., was sentenced June 15 in Los Angeles U.S. District Court to two years in prison for failing to provide required written notice to freight forwarders that she was shipping tens of thousands of rounds of .22-caliber ammunition to Philippines in June 2011. Mendoza pleaded guilty in February (see **WTTL**, Feb. 20, page 6). Mendoza's son, Mark Louie Mendoza, was charged in related eight-count indictment, including conspiracy, unlawful export of munitions, smuggling and money laundering, in 2016 and is at large.

FCPA: Linde North America Inc. and Linde Gas North America LLC June 16 agreed to pay \$11.2 million in forfeiture and disgorgement under Justice FCPA pilot program (see **WTTL**, March 13, page 6). From November 2006 to December 2009, Linde, through Spectra Gases Inc., N.J. company that Linde acquired in October 2006, made corrupt payments to high-level officials at National High Technology Center (NHTC) of Republic of Georgia, 100% state-owned and -controlled entity, Justice wrote in declination letter. Department's decision to close investigation was based on number of factors, including: (1) Linde's timely, voluntary self-disclosure; (2) company's thorough, comprehensive and proactive investigation; (3) Linde's full cooperation and its agreement to continue to cooperate; (4) company's agreement to disgorge profits from improper conduct; (5) steps Linde has taken and continues to take to enhance its compliance program and its internal accounting controls; and (6) company's full remediation, it added.

MORE FCPA: Malcolm Harris pleaded guilty June 21 in Manhattan U.S. District Court to wire fraud and money laundering charges for his role in scheme to bribe foreign official in Middle East to land real estate deal. Indictment was unsealed in January against Harris and father-son defendants, Ban Ki Sang of South Korea and Joo Hyun Bahn, aka Dennis Bahn, of Tenafly, N.J., for violating Foreign Corrupt Practices Act (FCPA), money laundering and wire fraud (see **WTTL**, Jan. 16, page 12). Two allegedly conspired to pay \$2.5 million in bribes to close \$800 million skyscraper deal in Vietnam. "Harris simply stole the \$500,000 upfront bribe paid by Bahn and Ban, which Harris then spent on lavish personal expenses," indictment noted. San Woo, aka John Woo, of Edgewater, N.J. was charged separately with conspiracy to violate FCPA. Bahn was arrested in Tenafly that day and released on \$250,000 bond, and Woo was arrested at JFK Airport. Ban is at large, believed to be in South Korea.

BRIBERY: Federal jury in Alexandria, Va., U.S. District Court June 15 convicted former BIS official Raushi J. Conrad of conspiracy to pay and receive bribes, and acceptance of bribes by public official. Charges related to services provided to BIS during data migration project but allegedly benefitting Conrad and his chicken restaurant (Corporation A). Conrad's official title was BIS director of system and security operations. Sentencing is set for Sept. 8. James Bedford of Dumfries, Va., pleaded guilty in December in same court to conspiracy to commit bribery and bribery of public official from 2010 through 2011 (see **WTTL**, Dec. 12, 2016, page 5). He admitted to conspiring with Conrad to gain over \$1 million in profits. Bedford was released on \$250,000 bond and is scheduled to be sentenced June 30.

AGRICULTURE: White House June 19 sent to Senate nomination of Gregory Doud to be USTR chief agricultural negotiator. Doud is president of Commodity Markets Council and previously served two years as senior professional staff for Sens. Pat Roberts (R-Kan.) and Thad Cochran (R-Miss.) on Senate Agriculture Committee. ...Agriculture Secretary Sonny Perdue June 16 named Jason Hafemeister to be first acting deputy under secretary for trade and foreign agricultural affairs (see **WTTL**, May 15, page 9). Hafemeister had been serving as acting deputy under secretary for farm and foreign agricultural affairs. He has spent almost 20 years with USDA and USTR.

EX-IM: Nominees for Export-Import (Ex-Im) Bank sent to Senate June 19. White House nominated former Reps. Spencer T. Bachus II (R-Ala.) as board member and Scott Garrett (R-N.J.) to be Ex-Im president. Garrett may prove to be difficult nomination because of his past denouncing Ex-Im (see **WTTL**, May 1, page 10). “I don’t think you’re going to find a lot of support on our side of the aisle for somebody who isn’t supportive of the Export-Import Bank,” Sen. Maria Cantwell (D-Wash.) said at Finance committee hearing June 21. Confirmation hearings have not been scheduled as required disclosures not yet complete, congressional source told **WTTL**.

TREASURY: Sen. Ron Wyden (D-Ore.) June 20 lifted hold on Sigal Mandelker, nominee for Treasury under secretary for terrorism and financial crimes. Senate next day voted 96-4 for confirmation. Hold had been placed over objections that Treasury was taking too long to turn over documents related to Russia investigation (see **WTTL**, May 29, page 10).... Senate June 22 confirmed Marshall Billingslea to be Treasury assistant secretary for terrorist financing in closer 65-35 vote.

AGOA: USTR June 20 announced initiation of out-of-cycle review of African Growth and Opportunity Act (AGOA) eligibility for Rwanda, Tanzania and Uganda. Secondary Materials and Recycled Textiles Association petitioned for review in March. AGOA imports from Rwanda, Tanzania and Uganda totaled \$43 million in 2016. U.S. exports to same countries totaled \$281 million in 2016. Public hearing will be held July 13 in Washington.

UK: Brexit negotiations began in Brussels June 19. Same day, UK international trade secretary Liam Fox met with USTR Robert Lighthizer in Washington. Two discussed bilateral trade relationship and “possibility of laying the groundwork for a potential new trade agreement soon after Brexit,” according to joint release. Annual Trade between U.S. and UK is \$230 billion.

JUSTICE: Former Assistant Attorney General for Criminal Division Leslie Caldwell will join Latham & Watkins LLP’s San Francisco office in September as partner in white collar defense & investigations practice, firm announced June 22. Prior to joining Justice in 2014, she was partner at Morgan Lewis & Bockius LLP in New York for 10 years.

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